

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

AR.No. 38 of 2006()

PETITIONER

E.M.BABU, S/O.E.P.MATHUKUTTY,
AGED 53, ERUMALA HOUSE, KARUR KARA,
KOTHAMANGALAM VILLAGE, KOTHAMANGALAM TALUK,
REP. BY POWER OF ATTORNEY HOLDER E.M.RAJAN,
S/O.E.P.MATHUKUTTY, AGED 56, ERUMALA HOUSE,
KARUR KARA, KOTHAMANGALAM VILLAGE, DO. TALUK.

BY ADV. SRI.N.J.MATHEWS
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

RESPONDENTS:

1. N.C.KUNJAPPAN,
S/O.N.M.CHACKO, CHACKO NIVAS,
NADUKUDIYIL, MATHIRAPPILLY, KOTHAMANGALAM.

2. N.C.THOMAS, S/O.N.M.CHERIYAN,
NADUKUDIYIL, KARUR, KOTHAMANGALAM.

R1 BY ADV. SRI.GEORGE THOMAS (MEVADA)

THIS ARBITRATION REQUEST HAVING BEEN FINALLY HEARD
ON 25.06.2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

PIUS C. KURIAKOSE, J.

.....
ARBITRATION REQUEST No.38 OF 2006
.....

DATED THIS THE 25TH JUNE, 2007

ORDER

This request is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 by the petitioner who, along with the respondents, was partner of a partnership firm by name M/s.Classic, averring that several disputes and differences have arisen between him and the respondents in relation to the partnership business and its management, which are liable to be referred to arbitration as per Clause 24 of Annexure-A2 Partnership Deed and that in terms of that clause he has already appointed an arbitrator under intimation to the respondents who have neither confirmed the appointment made by the petitioner nor made any appointment of their own. The prayer is that the appointment of the arbitrator made by the petitioner be confirmed or another suitable person be appointed as arbitrator.

2. Annexure-A3 produced by the petitioner is copy of the notice dated 26.10.2005 issued by him to the respondents informing them of appointment of Advocate Sri.Joshy Joseph of Muvattupuzha Bar as the petitioner's arbitrator for arbitrating upon the disputes and requesting

them either to confirm the appointment or to appoint their arbitrators. The petitioner states that the 1st respondent though sent a reply, did not confirm the appointment nor did appoint anybody else on his own. The 2nd respondent did not send even a reply. Annexure-A4 is copy of notice dated 9.12.05 issued by the petitioner to the respondents terminating the partnership with effect from 15.12.2005 and calling upon the 1st respondent, the Managing Partner to take account of all assets and liabilities of the firm and calling for a copy of the balance sheet and profit and loss account as on 15.12.2005. The petitioner complains that the respondents have not settled the accounts of the firm so far. Since the accounts have not been settled and the disputes between the parties remain unresolved, under Clause 24 of Annexure-A2, arbitration is the mode for resolving the disputes and hence the arbitration request.

3. A detailed objection has been filed by the 1st respondent along with which Annexure-A, true photo copy of reply dated 25.11.2005 issued by him to Annexure-A3 notice of the petitioner, is produced. Annexure-B produced by the 1st respondent is copy of reply sent by him to Annexure-A4 notice. It is contended that Annexure-A4 notice terminating the partnership was diametrically opposed to the

spirit and content of Annexure-A3 notice and that the arbitration request is filed ignoring what is stated in Annexures A and B. According to the 1st respondent, once a termination notice under Section 43 of the Indian Partnership Act is issued, the partnership comes to an end and therefore Annexure-A3 notice contemplating arbitration proceedings for resolution of disputes cannot survive at all. The objection contains several other contentions touching the 1st respondent's version regarding the disputes. Subsequently he has filed an additional counter affidavit on 27.2.2007 and along with the additional counter affidavit, Annexure-C photocopy of the statement of accounts pertaining to the firm for the month of January, Annexure-D photocopy of covering letter and a cheque issued to petitioner on 10.2.07 and Annexure-E photo copy of covering letter and another cheque issued to the 2nd respondent are also produced. Through these documents and the contentions in the additional counter affidavit, the 1st respondent denies the allegations of mismanagement and non-rendition of accounts raised against him by the petitioner.

4. The 1st respondent has filed an additional statement on 4.6.2007. Along with this additional statement, Annexures F and G which are respectively photo copy of statement of income and

expenditure for the month of April, 2007 and copy of cheque and receipt issued by the 2nd respondent are also produced. The endeavour through this additional statement is again to show that the allegations levelled against the 1st respondent are not correct.

5. Heard Mr.M.J.Mathews, learned counsel for the petitioner and Sri.George Thomas Mevada, learned counsel for the 1st respondent.

6. Though the counsel addressed me at length, the short question which arises for consideration is whether there exists a dispute between the petitioner and the respondents which is liable to be referred to arbitration under the provisions of the Arbitration and Conciliation Act, 1996. Having regard to the principles laid down by the Supreme Court in **Agri Gold Exims Ltd. v. Sri lakshmi knits & Wovens** [(2007) 3 SCC 686] and in **SBP & Co. v. Patel Engineering Ltd.** [(2005) 8 SCC 618], the above question has to be answered in the positive.

7. Annexure-A2 is admittedly a copy of the partnership deed binding on the parties and Clause 24 is, without doubt, a clause for referring to arbitration the disputes or differences arising between the parties which remain unresolved. Under Annexure-A2 it is provided that the dispute shall be referred for decision to one or more

arbitrators appointed by the disputing party and the other partners, and the decision of the arbitrator or arbitrators shall be binding and conclusive on all the partners. Annexure-A3 dated 26.10.2005 is a letter by which the petitioner informs the respondents of appointment of Advocate Mr.Joshy Joseph as the petitioner's arbitrator. Through Annexure-A3, the respondents are called upon to confirm the appointment made by the petitioner or to appoint their arbitrators within 30 days. The contentions notwithstanding, the fact remains that the respondents have neither confirmed the appointment made by the petitioner nor have they appointed their arbitrator.

8. In para.5 of the additional counter affidavit submitted by the 1st respondent, it is stated that in case this Court finds the arbitration request to be maintainable, then the retired District Judge named therein be appointed as the arbitrator.

9. I am also of the view that in the nature of the dispute it will be ideal to appoint a retired Senior District Judge as Arbitrator. I appoint Sri.P.S.Divakaran, retired District Judge and former Registrar of the High Court of Kerala, who also, like the person suggested by the 1st respondent, is known for his integrity and ability, as the Arbitrator to settle all the disputes between the parties over the business which

they conducted on the basis of Annexure-A2 Partnership Deed. The Arbitrator will enter on arbitration at his earliest and pass award in accordance with law.

The Arbitration Request will stand allowed as above.

(PIUS C.KURIAKOSE, JUDGE)

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AR.N0.38/06